IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE GILLETTE COMPANY, Plaintiff, v. ENERGIZER HOLDINGS, INC., SCHICK MANUFACTURING, INC., EVERREADY BATTERY COMPANY, INC., and ENERGIZER BATTERY, INC., Defendants.	Civil Action No. 03-12455 (DPW) JURY TRIAL DEMANDED

Joint Statement Under Fed. R. Civ. P. 26(f) and Local Rule 16.1(d)

The parties respectfully submit the following joint statement pursuant to Local Rule 16.1(d) in advance of the May 11, 2004 scheduling conference.

Proposed Agenda for Status Conference

1. Summary of the case (brief presentation by each side); and

2. Scheduling and potential bifurcation

Gillette Believes that the Court Should Set a Reasonable, but Expeditious Discovery Schedule

Gillette alleges in this case that the Intuition razor, shower hanger and sealed tubs manufactured and marketed by defendants (collectively "Schick") infringe United States Patent Nos. 6,415,517 and 6,499,595. Schick has asserted defenses of non-infringement and invalidity.

Gillette believes that discovery and pretrial proceedings should go forward promptly, and that the case can be ready for trial by Spring 2005. Gillette's proposed schedule is consistent with these goals. By contrast, Schick's proposed schedule

contemplates two years of proceedings on liability, followed by an as yet to be determined period for discovery and pretrial proceedings concerning damages.

Furthermore, in contrast to Schick, Gillette believes that discovery on liability and damages should proceed together. See, e.g., Home Elevators, Inc. v. Millar Elevator Service Co., 933 F. Supp. 1090, 1091-92 (N.D. Ga. 1996) (denying motion, in patent case, for bifurcation of trial and stay of discovery on damages); Windsor Industries, Inc. v. Pro-Team, Inc., 87 F. Supp.2d 1129, 1131-32 (D. Colo. 2000) (same). Schick has proposed bifurcating discovery on these issues. Gillette submits that Schick's proposal would be wasteful and disruptive. It is clear that many of the same witnesses will testify on issues relevant to literal infringement, infringement under the doctrine of equivalents, willfulness, validity and damages. Such issues include the history, efficacy and significance of the inventions, long-felt need, failure of others to make the inventions, commercial success, and copying. Under Schick's proposal, several witnesses will be required to testify twice, and the parties will have needless disputes concerning the proper boundaries between merits and damages discovery.

Gillette proposes the following pretrial schedule:

Discovery and Motion Practice

Event	Proposed Deadline
Fact Discovery Begins	April 13, 2004
Defendants to Decide Whether to Produce Any Opinions of Counsel	July 16, 2004
Opening Claim Construction Briefs Filed	August 6, 2004
Fact Discovery Closes	October 15, 2004
Opening Expert Reports Due (for parties having the burden of proof)	November 1, 2004
Responsive Expert Reports Due	November 22, 2004

Event	Proposed Deadline
Expert Discovery Closes	December 31, 2004
Summary Judgment Motions Filed	January 31, 2005

Energizer Believes that the Court Should Bifurcate Discovery Into Damages and Liability Phases

Pursuant to Local Rule 26.3, Energizer believes that the Court should bifurcate discovery into two phases: liability and damages. Judge Saris ordered bifurcated discovery in the other patent infringement action pending in this District between the same parties (C.A. No. 03 CV 11514 PBS).

Judge Saris agreed with Energizer that discovery bifurcation will avoid unnecessary paper discovery, expert discovery, and depositions in the event that all or part of the case is disposed of on summary judgment. Efficiency and economy benefit both sides, and thus neither side will be prejudiced by a discovery bifurcation order in this case.

Schick proposes the following pretrial schedule:

Phase 1: Liability

Event	Proposed Deadline
Phase I: Liability	
Commencement of fact discovery period	At Will (assuming compliance with procedural rules)
All motions to join other parties and to amend pleadings	August 31, 2004
All fact discovery concerning liability issues, including fact depositions, shall be completed	January 31, 2005
The parties shall serve all expert reports concerning liability issues, and otherwise comply with the expert disclosure requirements of Fed. R. Civ. P. 26(a)	February 28, 2005

Event	Proposed Deadline
All rebuttal expert disclosures concerning liability issues shall be served	March 28, 2005
All expert discovery, including depositions, shall be completed	May 27, 2005
Markman hearing submissions shall be filed and served for all patents in suit	June 30, 2005
Markman hearing conducted	July 2005
Markman decision issued	At Court's discretion
Rule 56 motions shall be filed and served	Markman Decision Date + 30 days
All oppositions to Rule 56 motions shall be filed and served	Markman Decision Date + 60 days
Reply briefs shall be filed and served	Markman Decision Date + 75 days
The court shall hear oral argument on Rule 56 motions	At Court's discretion
Phase 2: Damages (Bifurcated)	**Proposed Deadline**
Parties shall exchange written positions concerning "advice of counsel" defense (and related waiver of privilege issues)	To be determined
All fact discovery concerning damages, including fact depositions, completed	To be determined
The parties shall serve all expert reports concerning damages, and otherwise comply with the expert disclosure requirements of Fed. R. Civ. P. 26(a)	To be determined
The parties shall serve all rebuttal expert disclosures concerning damages	To be determined
The parties shall complete all expert discovery concerning damages, including depositions	To be determined
Pre-Trial and Trial	
Final pre-trial conference	To be determined
Trial	To be determined

Other Matters

While they differ on scheduling matters, the parties are in agreement on the following:

3. The parties agree that the limits on depositions and interrogatories set forth in the local rules and Federal Rules of Civil Procedure shall apply in this case.

4. The parties agree that discovery will be needed on issues of infringement, defendants' defenses to infringement, willful infringement, and on damages.

5. The parties have had settlement discussions but have not reached any agreement.

6. Neither party consents to trial before a Magistrate Judge.

THE GILLETTE COMPANY

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